

**ENTERED**

December 05, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

HIL-TECH, LLC,

Plaintiff,

VS.

SHREE MAHALAXMI INDUSTRIES, *et*  
*al.*,

Defendants.

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CIVIL ACTION NO. 4:22-CV-02310

**ORDER**

Before the Court are United States Magistrate Judge Yvonne Y. Ho's Memorandum and Recommendation filed on October 27, 2023 (Doc. #95), Plaintiff Hil-Tech, LLC's ("Plaintiff") Objections (Doc. #96), and Defendant Seaboard Food Services, Inc.'s ("Seaboard") Response (Doc. #97). The Magistrate Judge's findings and conclusions are reviewed de novo. FED. R. CIV. P. 72(b); 28 U.S.C. § 636(b)(1); *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Having reviewed the parties' arguments and applicable legal authority, the Court adopts the Memorandum and Recommendation as its Order.

The Court finds that the indemnity provision at issue does not comply with the express negligence rule, and even assuming that actual notice or knowledge can override express negligence requirements, Plaintiff's allegations do not show that Seaboard had the requisite knowledge. In addition, the Court finds that amendment would be futile. Therefore, Seaboard's Motion to Dismiss Plaintiff's First Amended Complaint (Doc. #85) is GRANTED. Plaintiff's Motion for Extension of Time to Respond to Seaboard's Motion to Dismiss (Doc. #89) and Motion

for Leave to file Second Amended Complaint (Doc. #90) are DENIED. Plaintiff's claims against Defendant Shree Mahalaxmi Industries remain pending.

It is so ORDERED.

DEC 04 2023

Date

A handwritten signature in black ink, appearing to be 'AMB' with a checkmark-like flourish at the end.

The Honorable Alfred H. Bennett  
United States District Judge